

By: Harris

S.B. No. 1314

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of the practice of acupuncture.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 205.001, Occupations Code, is amended by amending Subdivision (2) and adding Subdivision (2-a) to read as follows:

(2) "Acupuncture" means:

(A) the ~~[nonsurgical, nonincisive]~~ insertion of an acupuncture needle and the application of moxibustion to specific areas of the human body as a primary mode of therapy to treat and mitigate a human condition, including evaluation and assessment of the condition; and

(B) the administration or recommendation of thermal or electrical treatments or ~~[the recommendation]~~ of dietary guidelines, energy flow exercise, or dietary or herbal supplements in conjunction with the treatment described by Paragraph (A).

(2-a) "Acupuncture" does not include surgery or clinical needle electromyography.

SECTION 2. Section 205.101, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (d) ~~[Subject to the advice and approval of the medical board]~~, the acupuncture board shall:

1 (1) establish qualifications for an acupuncturist to
2 practice in this state;

3 (2) establish minimum education and training
4 requirements necessary for the acupuncture board to [~~recommend that~~
5 ~~the medical board~~] issue a license to practice acupuncture;

6 (3) administer an examination that is validated by
7 independent testing professionals for a license to practice
8 acupuncture;

9 (4) develop requirements for licensure by endorsement
10 of other states;

11 (5) prescribe the application form for a license to
12 practice acupuncture;

13 (6) [~~recommend rules to~~] establish licensing and other
14 fees;

15 (7) approve educational programs or institutions of
16 acupuncture and oriental medicine that meet the acupuncture board's
17 minimum standards [~~establish the requirements for a tutorial~~
18 ~~program for acupuncture students who have completed at least 48~~
19 ~~semester hours of college~~]; and

20 (8) adopt [~~recommend~~] additional rules as are
21 necessary to administer and enforce this chapter.

22 (b) In establishing minimum education and training
23 requirements under Subsection (a)(2), the acupuncture board shall
24 consider the minimum education and training standards established
25 by the Accreditation Commission for Acupuncture and Oriental
26 Medicine. [~~The acupuncture board does not have independent~~
27 ~~rulemaking authority. A rule adopted by the acupuncture board is~~

1 ~~subject to medical board approval.]~~

2 (d) A rule relating to the scope of practice of acupuncture
3 must have the advice and approval of the medical board.

4 SECTION 3. Section 205.103, Occupations Code, is amended to
5 read as follows:

6 Sec. 205.103. FEES. The acupuncture ~~[medical]~~ board shall
7 set ~~[and collect]~~ fees in amounts that are reasonable and necessary
8 to cover the costs of administering and enforcing this chapter,
9 including the costs for ~~[without the use of any other funds~~
10 ~~generated by]~~ the medical board to collect the fees.

11 SECTION 4. Section 205.201, Occupations Code, is amended to
12 read as follows:

13 Sec. 205.201. LICENSE REQUIRED. (a) Except as provided by
14 Section 205.303, a person may not practice or represent that the
15 person practices acupuncture in this state unless the person holds
16 a license to practice acupuncture issued by the acupuncture board
17 under this chapter.

18 (b) A person practices acupuncture if the person performs,
19 offers to perform, or attempts to perform acupuncture.

20 (c) A person represents that the person practices
21 acupuncture if the person:

22 (1) uses in connection with the person's name or
23 business activity:

24 (A) the words "acupuncturist" or "acupuncture";

25 (B) the letters or abbreviation "L.Ac." or

26 "Lic.Ac."; or

27 (C) any other words, letters, abbreviations, or

1 insignia indicating or implying that the person is an
2 acupuncturist; or

3 (2) directly or by implication represents to the
4 public that the person is an acupuncturist or that the person
5 provides acupuncture.

6 (d) This section does not apply to a person acting under the
7 delegation and supervision of a physician.

8 SECTION 5. Section 205.204, Occupations Code, is amended to
9 read as follows:

10 Sec. 205.204. APPLICATION FOR EXAMINATION. An application
11 for examination must be:

12 (1) in writing on a form prescribed by the acupuncture
13 board;

14 (2) verified by affidavit;

15 (3) filed with the executive director; and

16 (4) accompanied by a fee in an amount set by the
17 acupuncture [medical] board.

18 SECTION 6. Section 205.206, Occupations Code, is amended by
19 adding Subsection (e) to read as follows:

20 (e) The acupuncture board may deny or withdraw the board's
21 approval of a school or educational program that does not meet the
22 board's prescribed course of study or other educational standards.

23 SECTION 7. The heading to Section 205.301, Occupations
24 Code, is amended to read as follows:

25 Sec. 205.301. EVALUATION [~~REFERRAL~~] BY OTHER HEALTH CARE
26 PRACTITIONER REQUIRED.

27 SECTION 8. Sections 205.301(a), (b), and (d), Occupations

1 Code, are amended to read as follows:

2 (a) A license holder may perform acupuncture on a person
3 only if the person was~~+~~

4 ~~[(1)]~~ evaluated by a physician, chiropractor, or
5 dentist, or a person acting under the delegation and supervision of
6 a physician, as appropriate, for the condition being treated within
7 12 ~~[six]~~ months before the date acupuncture is performed~~[-or~~

8 ~~[(2) referred by a chiropractor within 30 days before~~
9 ~~the date acupuncture is performed].~~

10 (b) A license holder acting under Subsection (a) ~~[(a)(1)]~~
11 must obtain reasonable documentation that the required evaluation
12 has taken place. If the license holder is unable to determine that
13 an evaluation has taken place, the license holder must obtain a
14 written statement signed by the person on a form prescribed by the
15 acupuncture board that states the person has been evaluated by a
16 physician, chiropractor, or dentist, or a person acting under the
17 delegation and supervision of a physician, within the prescribed
18 time. The form must contain a clear statement that the person
19 should be evaluated by a physician, chiropractor, or dentist, or a
20 person acting under the delegation and supervision of a physician,
21 for the condition being treated by the license holder.

22 (d) The medical board, with advice from the acupuncture
23 board, by rule may modify:

24 (1) the scope of the evaluation under Subsection (a)
25 ~~[(a)(1)]~~; or

26 (2) the period during which treatment must begin under
27 Subsection (a) ~~[(a)(1) or (2)]~~; or

1 ~~[(3) the number of treatments or days before referral~~
2 ~~to a physician is required under Subsection (c)].~~

3 SECTION 9. Section 205.302, Occupations Code, is amended to
4 read as follows:

5 Sec. 205.302. AUTHORIZED PRACTICE WITHOUT EVALUATION
6 ~~[REFERRAL]. [(a) After notice and public hearing, the medical~~
7 ~~board shall determine by rule whether an acupuncturist may treat a~~
8 ~~patient for alcoholism or chronic pain without a referral from a~~
9 ~~physician, dentist, or chiropractor. The medical board shall make~~
10 ~~the determination based on clinical evidence and what the medical~~
11 ~~board determines to be in the best interest of affected patients.~~

12 ~~[(b)]~~ Notwithstanding Section 205.301, a license holder
13 may, without an evaluation ~~[a referral]~~ from a physician, dentist,
14 or chiropractor, or a person acting under the delegation and
15 supervision of a physician, perform acupuncture on a person for:

16 (1) smoking addiction;
17 (2) weight loss; or
18 (3) ~~[substance abuse,]~~ to the extent permitted by
19 medical board rule adopted with advice from the acupuncture board:

- 20 (A) substance abuse;
21 (B) chronic pain;
22 (C) stress;
23 (D) an allergy;
24 (E) nausea or a digestive disorder;
25 (F) depression;
26 (G) insomnia; or
27 (H) a cosmetic procedure.

1 SECTION 10. Sections 205.303(a) and (d), Occupations Code,
2 are amended to read as follows:

3 (a) The medical board may certify a person as an acudetox
4 specialist under this section if the person:

5 (1) provides to the medical board documentation that
6 the person:

7 (A) is a licensed social worker, licensed
8 professional counselor, licensed psychologist, licensed chemical
9 dependency counselor, licensed vocational nurse, or licensed
10 registered nurse; and

11 (B) has successfully completed a training
12 program in acupuncture detoxification that meets guidelines
13 approved by the medical board; and

14 (2) pays a certification fee in an amount set by the
15 acupuncture [~~medical~~] board.

16 (d) The medical board may annually renew the certification
17 of an acudetox specialist under this section if the person:

18 (1) provides to the medical board documentation that:

19 (A) the certification or license required under
20 Subsection (a)(1)(A) is in effect; and

21 (B) the person has successfully met continuing
22 education requirements established by the medical board under
23 Subsection (e); and

24 (2) pays a certification renewal fee in an amount set
25 by the acupuncture [~~medical~~] board.

26 SECTION 11. Section 205.355, Occupations Code, is amended
27 to read as follows:

1 Sec. 205.355. REQUIRED DISCIPLINARY ACTION FOR FAILURE TO
2 OBTAIN EVALUATION [~~REFERRAL~~]. A [~~Except as provided by Section~~
3 ~~205.301(a)(2), a~~] license to practice acupuncture shall be denied
4 or, after notice and hearing, revoked if the applicant or license
5 holder violates Section 205.301(a) [~~205.301(a)(1)~~].

6 SECTION 12. Sections 205.003(a) and 205.301(c),
7 Occupations Code, are repealed.

8 SECTION 13. (a) The Texas State Board of Acupuncture
9 Examiners shall adopt rules as required by Section 205.101,
10 Occupations Code, as amended by this Act, not later than January 1,
11 2010. A rule or form in effect under Chapter 205, Occupations Code,
12 on the effective date of this Act remains in effect until the rule
13 or form is amended or replaced by a new rule or form adopted or
14 prescribed under Section 205.101, Occupations Code, as amended by
15 this Act.

16 (b) The Texas Medical Board shall adopt necessary rules
17 under Section 205.302, Occupations Code, as amended by this Act,
18 not later than September 1, 2010.

19 (c) An application for a license to practice acupuncture
20 filed under Chapter 205, Occupations Code, before the effective
21 date of this Act is covered by the law in effect immediately before
22 the effective date of this Act, and the former law is continued in
23 effect for that purpose.

24 SECTION 14. This Act takes effect immediately if it
25 receives a vote of two-thirds of all the members elected to each
26 house, as provided by Section 39, Article III, Texas Constitution.
27 If this Act does not receive the vote necessary for immediate

S.B. No. 1314

1 effect, this Act takes effect September 1, 2009.